

wondered if sexual intercourse would be painful when Elia Faye told her and Linda how babies were conceived.

Melissa apparently had not inherited her mother's propensity for obesity. At the time of her death, Melissa was 4' tall and weighed only 85 lbs (Appendix 39).

**E. - Background Information About Jessie Cummings which Assists in Understanding this Case.**

Jessie and his younger sister Debbie were the last of seven children born to their mother, Marie, who was born in West Virginia. Their father was Jesse S. Cummings, who was born in Lehigh, Oklahoma. Although Jessie and his dad had the same first name, they spell it differently, and they have different middle names<sup>3</sup>.

Marie's first child, Eugene Edmond, was the result of her being raped at age 13. He was shot and killed in a bar fight in Arizona around 1969. A woman with a third grade education and little where with-all, Marie married her first husband at a young age in order to give her baby a name. After their divorce, Marie married Pete Runyon. During that marriage she gave birth to four children. The youngest was Judy Mayo, the adult victim in this case.

After Marie and Pete Runyon separated, Pete had custody of the children. Marie married Jesse Cummings in 1953, in Solome, Arizona. Marie gave birth to Jessie Cummings in 1955, in Modesto, California, and to Debbie Cummings in 1961, in Antlers, Oklahoma.

Judy's birth name was Runyon. Because her father raped her as a young child, she began using Cummings as her last name after Marie married Jesse Cummings. Her older siblings have had little contact with her and the rest of the family after they grew up and left home.

During Jessie's childhood, his dad served a five-year prison term for cattle theft in 1961, and often was away from home while working as a truck driver. Marie was ill-suited to be a single mother. She was bad tempered, an alcoholic, and had poor parenting skills. Her youngest child, Debbie, describes her childhood as very difficult. She and Jessie were exposed to many traumatic

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<sup>3</sup>Jessie's name is incorrect on the Information and pleadings in the trial court and on direct appeal. A motion to substitute his correct name is pending before this Court.

experiences which Debbie finds hard to talk about and tries not to remember.

An example of the childhood experiences which Jessie had is an incident that several persons have described, including Sherry Cummings. One day when Jessie was a teen living at home, his mother got mad at him. She was drunk and he refused to go to the store to buy her more beer. His mother got out a shotgun and started shooting at him as he fled from the house.

After Judy married Henry Moody, around 1960, she often lived close to her parents. As a young teen, Jessie would find refuge from problems in Judy's and Henry's home. Judy was 11 years older than Jessie and was a second mother to him. She provided him protection and a place to stay. Throughout Jessie's adult life, he would maintain close contact with Judy, and they helped each other out as best they could. One of Jessie's talents is fixing up old vehicles, and he often served as her mechanic.

Like many youths in his socio-economic group, Jessie dropped out of school at a young age. In addition to a lack of emphasis of education in the subculture in which he was raised, Jessie was limited cognitively by an I.Q. of 81, which places him in the borderline retarded range. Jessie never completed the 5<sup>th</sup> grade. He started working with his dad to help support the family. From a young age he worked in cotton fields and on lettuce farms. Jessie and his dad also drove trucks, repaired windmill machines and did other mechanical work.

Jessie was 17 years old when he married his first wife, Mary Helen Yaws, who is a cousin of his third wife, Sherry Cummings. They married in Old Mexico. In <sup>1972</sup>1974, Jessie, his parents, and Judy and her family were all living in Visalia, California. He was sent to an adult work camp at age 17 for joy riding and burglaries. He left the camp without permission two times, which resulted in his picking up an escape conviction.

Jessie was in a motorcycle accident in Portersville, California around 1976. A few years later, Jessie and Mary Helen separated. During this period, Jessie had been living back and forth between Oklahoma and California. His second wife was Janell Morgan, who he met in a cafe in Calvin, Oklahoma. She was with Jessie when he was driving a truck hauling logs and the truck rolled over. Janell and Jessie married in May, 1978.

In January of 1983, Jessie was treated at the Emergency Room of Atoka Hospital, and a few days later at McAlester Regional Hospital, for a gunshot wound when a .22 gun accidentally fired and he was hit. It was not possible to remove the bullet, which remains lodged in Jessie's lower left hip to this day. This often causes him to have lower back pain and numbness in his left leg, which can only be treated with medications for the pain.

In 1983, Jessie's youngest sister, Debbie, married Jimmy Smith. Throughout their lives, Jessie and Debbie have remained close. He often stayed with her as a temporary place to live. In 1984, Jessie and Janell were back living in Batesville, Arkansas. In April of that year, Jessie and his dad were picked up and extradited back to Visalia, California, on warrants arising out of theft charges. The charges were dropped when the witnesses did not identify Jessie and his dad as being involved in the offense.

Jessie returned to Batesville, Arkansas, after his release. During the plane trip back to California, the plane made a sudden drop, which caused Jessie to have a ruptured ear drum. This resulted in Jessie undergoing a tympanoplasty of the left ear at Baptist Hospital in Little Rock in November, 1985.

During that same period of time, Sherry Mitchell had migrated to the Batesville area and became reacquainted with Jessie, who was still married to Janell. Sherry was not getting along with her mother, primarily because of a mentally unbalanced boyfriend that lived with her mother. Sherry reports that she was attracted to Jessie because of his reputation for taking good care of his women and providing for them. Sherry also began a bisexual relationship with Janell.

Despite his medical problems, Jessie liked to keep busy and work. During the 1980's, Jessie earned money doing a variety of things. In 1985, he earned a Certificate of Training from Ranger Security and Investigations for basic armed guard training. In addition to security work, Jessie drove trucks, repossessed cars and worked for bondsmen as a bond-recovery agent. During one of his bond-recovery expeditions, he was arrested in Memphis, Tennessee in June of 1985. The charges were dismissed when it was proved he was carrying a pistol while looking for a bond skipper for Gary Edwards Bonding out of Batesville.

In December, 1985, Jessie's parents were living in Coal County, Oklahoma. Jessie, Janell and Sherry had moved to Oklahoma. They stayed in a travel trailer that was parked next to the house which Debbie and Jimmy Smith were renting in Tupelo. On January 26, 1986, Jessie and Debbie's mother died from cancer in Coalgate. Despite all her deficiencies as a mother and her faults, Jessie took her passing very hard. Four months later, Jessie's dad married Pamela Gardner, a young woman with four young children.

Sherry became pregnant in the Fall of 1986. A few months later she discovered that Lahoma, her mother, was sleeping with Jessie (see Appendix 37). This resulted in an argument in which Sherry cut Jessie on the chest with a knife. Not long after this, Janell and Jessie divorced in February 1987.

Around this same time Jessie took mid-wife training. He put it to good use when his father's new wife gave birth to a daughter in May 1987. They were all living in Arkansas at the time. Jessie had to help deliver the baby and stop Pam's internal bleeding until they could get her to the hospital. The doctor had Jessie sign the birth certificate as having delivered the baby, and he credited Jessie with saving Pam's life.

Sherry gave birth to Jessie's oldest child, Debbie Marie Cummings, on June 9, 1987, in Harrison, Arkansas. Debbie was delivered by c-section. Jessie and Sherry married on October 8, 1987, in Tupelo, OK. They were married by the family minister, Rev. Joseph Lester, in the home of Jessie's sister Debbie Smith.

On April 21, 1988, Jessie was admitted to Valley View Hospital in Ada, Oklahoma. He was complaining of back and neck pain, headaches and syncope. His medical history indicated that: he has had headaches all his life beginning in childhood; he has a gunshot wound with non-operative nerve damage and residual pain down his left leg, and his legs give way at times; treatment for ulcers in the past; and a cyst in the right optical region.

The discharged diagnosis was muscle spasms in the back and neck, and syncope due to an allergic reaction to Buprenex. X-rays of the spine during that hospitalization showed that Jessie had mild degeneration in the lower thoracic spine. Additional testing about a week later resulted in

Jessie receiving a diagnosis of a hematuria. On April 29, 1988, Jessie had a lipoma removed from the back of his neck.

Jessie and Sherry again were living in Batesville, Arkansas, in the Spring of 1989. As is discussed more fully below, Anita Lewis became acquainted with them and soon moved in with them. Sherry and Anita had a bisexual relationship in addition to their relationship with Jessie. At Sherry's suggestion, Anita and Jessie were married on June 14, 1989, with Sherry in attendance.

Jessie had been driving semi-trucks for Weaver Trucking. When he lost that job, Sherry, Anita, the children and Jessie moved to Oklahoma around July 1989. They initially stayed with Debbie and Jimmy Smith in Tupelo, OK, but eventually found a place to rent.

Judy Moody had moved to Tupelo the previous year. Her first husband had died in Arkansas in 1987. She married Eugene Mayo at Debbie Smith's house in Tupelo on May 7, 1988. When Jessie, Sherry and Anita moved to a rental house in Phillips in January 1990, Judy and Eugene had moved to Atoka County. They all stayed in touch with each other, by telephone, CB radio, and frequent visits.

Jessie's life with two women was not free of tensions and challenges. In an argument around 1989, Anita tried to stab Jessie with a knife. When he blocked it with his hand, he received a deep gash on his thumb, which resulted in a scar. This gave her something more in common with Sherry, who had previously attacked Jessie with a knife because her mother was sleeping with him.

Jessie contributed to the support of the Cummings' household through a variety of endeavors. He is an astute junker and trader, and often made money fixing things up and selling them. He had become friends with an older gentleman, W. L. Hill, who moved to Powderly, Texas. At times Jessie would stay with Mr. Hill in Texas to work odd jobs in that area. From time to time, Jessie would repossess cars for used car dealers and pick up bond skippers for local bondsmen.

Jessie had developed glaucoma and began seeing Dr. Quilan in Ada, OK, for this condition in early 1990. He had eye surgery in September 1990, and twice again in November 1990, and February 1991. It was around this time that Jessie developed a dependence on Percodan and other pain killers, seeking relief from headaches from the glaucoma and back pain from the bullet

embedded in his hip. In November 1991, Jessie applied for Social Security Disability benefits. A hearing was held in 1992, and benefits were awarded by a decision issued in May 1993.

Jessie's dad was diagnosed with cancer in the Summer of 1991. Jess and Pam had divorced, and he was living with Jessie in the Cummings' household in Philips. He began losing a considerable amount of weight and became anorexic, according to his medical records. (Appendix 47). The stress on the Cummings' family increased when Eugene Mayo abandoned Judy and moved back in with his parents in August of that year.

Judy was very dependent on Eugene, and was distraught by his leaving her, especially since it appeared he left because he had found a girlfriend. Judy's son James was in prison at that time. She sent her son Henry to Arkansas shortly after Eugene left, along with James' wife Mildred, who had become pregnant by Henry. That left Judy living alone with her 11 year old daughter, Melissa Moody, in a house they were renting in Tushka.

Jessie had sold Eugene and Judy a red flatbed pickup truck earlier in 1991. The Bill of Sale to the truck was in both their names, and they were making payments to Jessie. At the end of August the truck was at Jessie's house for repairs. Judy and Melissa stayed at Jessie's house while the truck was being repaired, further adding to the tensions in the household.

Labor Day was early in 1991, falling on September 1. Jessie finished the truck repairs that weekend, not knowing it would be one of the last favors he did for his sister. Judy and Melissa were killed by Anita and Sherry on Thursday, September 5, 1991. That Fall, Jessie buried his father, his sister and his niece.

#### **F. Sherry Cummings: The Dominate Person in the Cummings' Household**

Sherry Marie Mitchell was born on October 17, 1967, in Jay, Oklahoma. She is the oldest of eight children that Lahoma Yaws had with a variety of men. Sherry's father is J.B. Colvard. Sherry's youngest sibling is her half sister Lahoma Yaws [herein Lahoma II to distinguish her from her mother, who has the same name], who is 10 years younger than Sherry. Lahoma II was the prosecution's only witness at the penalty phase of Jessie's trial. Background information about her